Hui Jia Hao v Perdana Park City Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO D-22NCC-2193 OF 2010
HAMID SULTAN J
24 JUNE 2011

Contract — Offer — Invitation to treat — Invitation to priority sales event to place bookings for purchase of property — Whether invitation letter and accompanying entry and booking procedures was offer or invitation to treat — Whether plaintiff had made offer to purchase property from first defendant — Whether there was legally binding contract between plaintiff and first defendant — Whether second defendant was bona fide purchaser for value

The first defendant, a property developer, had organised a 'Priority Sales Event' ('the event') for invited guests to view mock-up models of a new property development to be developed by the first defendant and to place bookings for the purchase of units in the new development. The plaintiff and the second defendant were amongst the guests invited to the event. The first defendant's invitation letters had included a copy of the 'entry and booking procedures' ('the booking procedures'), which provided the guests with information as to how to place their bookings for the purchase of units in the new development. On the day of the event, the plaintiff claimed that he had successfully booked to purchase unit No CSM141 ('the property') in the new development. However, the plaintiff had not made any payment towards the booking but had later attempted to deposit two bank drafts for the purchase of the property. The first defendant claimed that the property had already been purchased by the second defendant. According to the first defendant, the plaintiff had agreed to the second defendant purchasing the property and was aware that the second defendant had tendered a cheque for RM100,000 as part payment for the purchase of the property on the day of the event. As such, the first defendant claimed that the plaintiff could not now claim ownership over the property. The plaintiff commenced the present action against the first and second defendants. It was the plaintiff's case that the invitation letter and accompanying booking procedures from the first defendant constituted a valid offer, which the plaintiff had accepted when it complied with the booking procedures. As such, the plaintiff contended that it had entered into a legally binding contract with the first defendant. It was the plaintiff's argument that the invitation letter and booking procedures amounted to a unilateral contract by the first defendant with the intention to be bound whereas the first defendant submitted that the invitation letter and booking procedures could at most only be treated as an invitation to treat. Further the first defendant submitted that even if the plaintiff had made an offer for the unit there was no

evidence that the first defendant had accepted the plaintiff's offer. The parties had agreed to end this dispute by way of an O 14A application.

Held, dismissing the plaintiff's action with no order as to costs:

(1) In the present case, the invitation letter and booking procedures (the two documents) received by the invited guests would neither amount to an offer capable of immediate acceptance for the purchase of the property nor be classified as an invitation to treat. In consequence the statements contained in the two documents would not qualify as a unilateral contract but would instead stand as a notice of the event and what was going to happen at the event. As such, the two documents were not a binding contract between the plaintiff and the first defendant (see paras 14, 16–17).

(2) The plaintiff had not made an offer to purchase the property from the first defendant on the day of the event. There was no evidence of such an intention to create an enforceable agreement (see para 18).

(3) The court found the second defendant to be a bona fide purchaser for value in the instant case (see para 20).

[Bahasa Malaysia summary

Defendan pertama, pemaju perumahan, telah menganjurkan 'Priority Sales Event' ('acara') untuk tetamu-tetamu yang dijemput untuk melihat contoh-contoh reka bentuk pembangunan perumahan yang baru yang akan dibangunkan oleh defendan pertama dan untuk membuat penempahan-penempahan untuk membeli unit-unit di pembangunan baru tersebut. Plaintif dan defendan kedua adalah di antara tetamu-tetamu yang dijemput untuk acara tersebut. Surat jemputan defendan pertama telah memasukkan salinan 'entry and booking procedures' ('prosedur penempahan'), yang memberikan maklumat kepada tetamu-tetamu bagaimana untuk membuat tempahan-tempahan mereka untuk membeli unit-unit di pembangunan baru tersebut. Pada hari acara, plaintif mendakwa yang dia telah berjaya menempah untuk membeli unit No CSM141 ('hartanah') dalam pembangunan baru tersebut. Plaintif walau bagaimanapun tidak membuat apa-apa bayaran terhadap tempahan tersebut tetapi kemudiannya mencuba untuk mendeposit dua bank draf untuk pembelian hartanah tersebut. Defendan pertama mendakwa bahawa hartanah tersebut telah dibeli oleh defendan kedua. Mengikut defendan pertama, plaintif telah bersetuju terhadap pembelian hartanah tersebut oleh defendan kedua dan mengetahui bahawa defendan kedua telah menyerahkan cek berjumlah RM100,000 sebagai sebahagian bayaran untuk pembelian hartanah tersebut pada hari acara tersebut. Oleh itu, defendan pertama mendakwa bahawa plaintif sekarang tidak boleh menuntut pemilikan ke atas hartanah tersebut. Plaintif memulakan tindakan ini terhadap defendan-defendan pertama dan

kedua. Adalah kes plaintif bahawa surat jemputan dan prosedur penempahan yang dikepilkan daripada defendan pertama membentuk tawaran sah, yang mana plaintif telah menerima apabila dia mematuhi prosedur-prosedur penempahan tersebut. Oleh itu, plaintif berhujah bahawa dia telah memasuki kontrak mengikat dari segi undang-undang dengan defendan pertama. Adalah hujahan plaintif bahawa surat jemputan dan prosedur-prosedur penempahan merupakan kontrak unilateral oleh defendan pertama dengan niat untuk terikat sebaliknya defendan pertama berhujah bahawa surat jemputan dan prosedur-prosedur penempahan hanya boleh dianggap sebagai pelawaan tawaran. Defendan pertama selanjutnya berhujah bahawa walaupun plaintif membuat tawaran untuk unit tersebut tidak terdapat keterangan yang defendan pertama telah menerima tawaran plaintif. Pihak-pihak telah bersetuju untu menamatkan pertikaian ini melalui permohonan A 14A.

Diputuskan, menolak tindakan plaintif tanpa perintah kepada kos:

(1) Dalam kes ini, surat jemputan dan prosedur-prosedur penempahan ('kedua-dua dokumen') yang diterima oleh tetamu-tetamu yang dijemput bukan merupakan kepada tawaran yang berkebolehan untuk penerimaan segera belian hartanah tersebut dan tidak boleh diklasifikasikan sebagai pelawaan tawaran. Oleh itu penyataan-penyataan yang terdapat di dalam kedua-dua dokumen tersebut tidak berkelayakan sebagai kontrak unilateral tetapi sebaliknya tidak berubah sebagai notis acara dan apa yang akan berlaku pada acara tersebut. Oleh itu, kedua-dua dokumen bukan kontrak mengikat di antara plaintif dan defendan pertama (lihat perenggan 14, 16–17).

(2) Plaintif tidak membuat tawaran untuk membeli hartanah tersebut daripada defendan pertama pada hari acara tersebut. Tidak terdapat keterangan mengenai niat sedemikian untuk membentuk perjanjian yang dikuatkuasakan (lihat perenggan 18).

(3) Mahkamah mendapati dalam kes ini defendan kedua adalah pembeli bona fide untuk nilai (lihat perenggan 20).]

Notes

For cases on invitation to treat, see 3(3) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5360–5361.

Cases referred to

Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd [1994] 2 MLJ 754, SC (refd)

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256, CA (refd)

Clifton v Palumbo [1944] 2 All ER 497, CA (refd)

Daiman Development Sdn Bhd v Mathew Lui Chin Teck and another appeal [1978] 2 MLJ 239, FC (refd)

Eckhardt Marine Gmbh v Sheriff Mahkamah Tinggi Malaya, Seremban & Ors [2001] 4 MLJ 49; [2001] 3 CLJ 864, CA (folld)
Gibson v Manchester City Council [1979] 1 All ER 972, HL (refd)
Harvey v Facey [1893] AC 552, PC (refd)
Kam Mah Theater Sdn Bhd v Tan Lay Soon [1994] 1 MLJ 108, SC (refd)
Nai Yau Juu v Pasdec Corporation Sdn Bhd & Anor [2005] 3 MLJ 431; [2005] 5 CLJ 304, HC (refd)
Preston Corporation Sdn Bhd v Edward Leong & Ors [1982] 2 MLJ 22, FC (refd)
Skyline Trading Co v Tiow Yoke Lan [1969] 2 MLJ 212, FC (refd)
Sou Yong v Yuzin bte Abdullah @ Ho Yuzin [2006] 4 MLJ 209; [2006] 2 CLJ 1179, CA (refd)
Tang Meng Hock v Tang Ming Seng [2010] 1 MLJ 33; [2010] 1 CLJ 208, CA (refd)
Tasja Sdn Bhd v Golden Approach Sdn Bhd [2011] 2 CLJ 789, CA (refd)
Zainal Abidin Mohamed v Roslan Abdul Aziz & Anor [2003] 7 CLJ 132, HC (refd)

Legislation referred to

Contracts Act 1950 s 2
Rules of the High Court 1980 O 14A

Danaraj (Kalai Selvi with him) (Kamil Hashim Pury & Lim) for the plaintiff. HY Chong (SY Kwa with him) (Azman Davidson & Co) for the first defendant. EK Sng (Sng & Co) for the second defendant.

Hamid Sultan J:

[1] This is my judgment in respect of the plaintiff's action decided pursuant to O 14A of the Rules of the High Court 1980 upon the request and consent of all parties. The issues to be tried are marked as encl 23 and read as follows:

(i) whether the entry and booking procedures is a legally binding contract between the first defendant and the plaintiff;

(ii) whether the plaintiff has made an offer to purchase CSM141 on the day of the priority sales event and if there is an offer, the first defendant had accepted the offer as per documents in the common bundle of documents;

(iii) whether the second defendant is a bona fide purchaser notwithstanding the confusion in the name as reflected in the series of documents and correspondences in the common bundle of documents; and

(iv) in the event there is liability on the part of the first defendant and/or the second defendant the matter be referred to the deputy registrar for assessment of damages.

The following documents were agreed upon by all parties to be referred to for deciding the above issues namely: (i) encl 20 — the common bundle of documents; (ii) encl 19 — the plaintiff's chronology of events; and (iii) encl 17 — the first defendant's chronology of events.

In my view the central question in the instant case is whether the so called invitation letter dated 16 June 2010 and the 'Entry and Booking Procedure' from the first defendant to the plaintiff for the purchase of a property known as Casaman Unit CSM 141 is an offer.

BRIEF FACTS

[2] Learned counsel for the first defendant has summarised the facts as follows:

(a) on 26 June 2010, the first defendant held an event called the 'Priority Sales Event' at the show gallery of the first defendant to enable interested parties to view the mock-up models of the first defendant's new property development called 'Casaman Signature Homes' and to place bookings for the purchase of these properties to be developed by the first defendant;

(b) prior to the priority sales event, the first defendant had issued invitation letters to the guests to invite them to attend the priority sales event. A copy of the entry and booking procedures was enclosed together with the invitation letter;

(c) the plaintiff and the second defendant, amongst others, were invited to the priority sales event. On the day of the priority sales event, the plaintiff had made booking for the units of Casaman Unit No 13 and Casaman Unit No 140 jointly with other purchasers by tendering three copies of the bank drafts;

(d) On the same day, the second defendant had made booking for Casaman Unit No 141 ('CSM 141') (three-storey types) by tendering a cheque for the sum of RM100,000 being part payment for the purchase of the property and followed by the execution on the letter in respect of discount to purchase unit CSM 141, letter of offer to purchase unit CSM 141 together with the customer form;

(e) a copy of the official receipt which was issued manually evidencing the payment receipt towards the booking of unit CSM 141 was issued to the second defendant by the first defendant on the priority sales event;

(f) the plaintiff has also alleged that he booked CSM 141 but no payment was made towards the booking on the day of the priority sales event;

(g) however, the plaintiff, through his father, had attempted to deposit the bank drafts with the first defendant's employee on 28 June 2010 to

purchase CSM 141 but the attempt was made after the priority sales event. The first defendant's employee refused to accept his bank drafts, presented two days after the day of the priority sales event;

(h) the plaintiff's father has also requested the first defendant to remove the name of the second defendant and Yew Eng Soon from the sale and purchase agreement and instead, to register the plaintiff, himself and Yong Pitt Lok as the registered purchasers for CSM 141. However, the first defendant refused to do so unless consent has been obtained from the second defendant;

(i) On 14 July 2010 and 26 July 2010, the first defendant mistakenly wrote to the plaintiff, the second defendant, Yew Eng Soon and Yong Pitt Lok informing them to execute the legal documents for the sale and purchase of CSM 141 and to pay the sum of RM30,250 being the 10% deposit of the sale and purchase of CSM 141. The first defendant had, by letter dated 29 October 2010 addressed to the plaintiff, the second defendant, Yew Eng Soon and Yong Pitt Lok jointly, informed the addresses of the first defendant's mistake and of the withdrawal of the letters dated 14 July 2010 and 26 July 2010; and

(j) On 30 October 2010, the first defendant entered into a sale and purchase agreement with the second defendant for the purchase of CSM 141.

[3] The invitation letter and the booking procedures, inter alia, read as follows:

Invitation Letter

Hui Jia Hao

(address)

Dear Sir/Madam,

PRIORITY SALES EVENT

CASAMAN SIGNATURE HILLHOMES, DESA PARKCITY

Thank you for registering your interest for Casaman Signature Hillhomes.

We take great pleasure in inviting you to the exclusive Casaman Signature Hillhomes Priority Sales Event, details of which are appended below.

Place: The Show Gallery, Desa Parkcity

Time: 8.30 am to 6.00pm, Saturday, 26 June 2010

In appreciation of your support, we shall be offering these attractions at the Priority Sales Event:

* Introductory Prices

* Limited Early Bird Incentives

* Repeat Customer Discount

We anticipate a large turnout of guests for the Priority Sales Event, which will likely cause unintended chaos and an unpleasant experience for everyone. In the interest of promoting orderliness and fairness, we believe it is necessary to regulate entry of guests into the Sales Gallery. Hence, we shall be introducing an 'admission by balloting' system. Simply, this will entail each guest drawing a number randomly from a box, and admittance into the Sales Gallery will be carried out in chronological order of the numbers held by guests.

It is evident that your entry into the Sales Gallery is determined by the luck of the draw. You do not have to spend a sleepless night to queue for an advantage. All you need to do is to show up at the Sales Gallery not later than 8.30 am, 26 June to draw a number. It is extremely important that you read the attached document which sets our entry procedures and terms of booking a unit.

We encourage you to make an advance visit to our Show Gallery to familiarize yourself with Casaman Signature Hillhomes exhibits which will be unveiled from June 21, 2010 onwards. In doing so, you will be able to make quick and wise decisions on the day of the Priority Sales Event.

We look forward to seeing you on June 26, 2010.

Yours faithfully,

PERDANA PARKCITY SDNBHD

ENTRY & BOOKING PROCEDURES

Details of the Priority Sales Event are as follows:

Venue:	The Show Gallery 5 Persiaran Residen, Desa Parkcity 52200 Kuala Lumpur
Date:	8.30 am to 6.00pm, Saturday, 26 June 2010
Queue Number Draw:	8.30 am on same day
(for adminttance of guests)Refreshments	Breakfast from 7.30 am/Lumchfrom noon

OPERATING PROCEDURES

(The primary aim of these provisions is to promote fairness and orderliness in the booking of units. Although unintended, we apologize if any of the provisions appear harsh and disrespectful to you. We trust you will understand they are required for the common good of all. Your cooperation will be highly appreciated).

(a) The Priority Sales Event is strictly opened to invited guests. Guests are required to bring along the following:

(i) Invitation letter and Identity Card or identification document for verification purposes; and

(ii) For booking of units, a bank draft for RM50.000 (for two-storey types) or

RM 100,000 (for three-storey types) made payable to 'Perdana Park City Sdn Bhd' will be required as down payment for each unit.

(b) Please proceed to Guest Tents upon arrival. (They are located next to the Sales Gallery).

(c) At 8.30 am, the random drawing of queue numbers will be conducted by staff of the company.

(d) After the completion of draw, holders of numbers 1 to 40 will be invited to seat themselves in the Staging Tent from which they will be ushered into the Sales Gallery. Subsequently, following the same procedure, batches of 40 registrants each will be admitted into the Sales Gallery at intervals of 45 minutes.

(e) Guests forfeit their queue positions if they are not present when their queue numbers are called. They can draw for afresh number to re-join the queue.

(f) Once inside the Show Gallery, the booking of units will be conducted in accordance with chronological order of queue numbers.

(g) Guests can buy more than one unit in their own name or joint names. Transfer or re-assignment of booking is strictly prohibited. However for the 2-storey Types D, D1, D2, E, E1 & E2, limited to one unit per guest.

(h) Bookings without immediate down payment of deposits will not be entertained under any circumstance.

(i) To protect the interest of all regulation-abiding guests, we reserve the right to refuse booking rights of anyone who fails to comply with the regulations stated herein.

PRELIMINARIES

[4] Learned counsel for the plaintiff has summarised the plaintiff's case as follows:

(a) the plaintiff had been invited for the priority sales event conducted by the first defendant. Then, the plaintiff attended the priority sales event and obtained the first batch with ballot No 8 to enter the show gallery. The plaintiff with the invitation letter had booked the Unit No CSM 141 (three storey types) and been offered early bird discount and repeat buyer for the sum of RM130,250 (sic);

(b) it is the plaintiff's contention that, the first defendant had made a valid offer and the plaintiff had accepted the offer. As such, there is an existence of valid contract that had been entered between the plaintiff and the first defendant;

(c) however even though the plaintiff had a valid bank draft as per the entry and booking procedures set out by the first defendant, being the pre-requisite requirement for buying the property in the priority sales

event of 'Casaman Signature Hillhomes', the submission of the bank draft by the plaintiff to the first defendant was not accepted by the first defendant;

(d) on the other hand, the first defendant accepted a personal cheque in breach of entry and booking procedures from the second defendant who was not a ballot holder for the booking of the said property. Furthermore, there are four names listed as the purchasers of Unit CSM 141 including the plaintiff's name, which the plaintiff is not even aware of at the material time;

(e) thus, by accepting the personal cheque from the second defendant, the first defendant had breached the entry and booking procedures; but the booking should have been done by bank draft; and

(f) as such, the plaintiff is seeking for the right to purchase Unit CSM 141 from the first defendant for the purchase price as agreed on the priority sales event, inter alia, for the sum of RM2,605,000; declaration for the first defendant to accept the plaintiffs bank draft being the deposit for the said unit and to return back the deposit received from the second defendant and specific performance of the sale and purchase agreement of the Unit CSM 141.

[5] The plaintiff relies heavily on the locus classicus case of *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256. The learned author *Pollock & Mulla on Indian Contract and Specific Relief Acts*, (10th Ed) at pp 106–107 has summarised the facts of the case and jurisprudence as follows:

> The defendant company, being the proprietor of the 'carbolic smoke ball', a device for treating the nostrils and air passages with a kind of carbolic acid snuff, issued an advertisement offering £100 reward to any person who should contract influenza (or similar ailments as mentioned) after having used the ball as directed. It was also stated that £1000 was deposited with named bank, 'showing our sincerity in the matter'. The plaintiff bought one of the smoke balls by retail, did use it as directed, and caught influenza while she was still using it. Hawkins J held in a considered judgment that she was entitled to recover £100 as on contract by the company. The Court of Appeal held that the defendant company could not be heard to say the offer was not meant seriously; that the terms, though rather vague, were capable of a certain meaning, and at least included the event, which had happened, of the plaintiff taking influenza while still using the remedy; and that, if the offer was unguarded and improvident, that was the defendant's own folly and no answer to the plaintiff's claim,. There was an offer to anyone who performed the condition (namely, of using the smoke ball as directed) on the faith of the advertisement; and by such performance it became a contract, not absolute, but subject to the further independent condition of the user contracting influenza or the like while using the remedy, and perhaps during some reasonable time afterwards. As to the objection that to complete the plaintiff's acceptance of the offer there must either be

communication to the defendant or some act of public nature, Bowen LJ said:

> One cannot doubt that, as an ordinary rule of law, an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together … But there is this clear gloss to be made upon that doctrine, that, as notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so, and I suppose that there can be no doubt that where a person, in an offer made by him to another person, expressly or impliedly intimates a particular mode of acceptance as sufficient to make the bargain binding, it is only necessary for the other person to whom such offer is made to follow the indicated method of acceptance; and if the person making the offer expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification.
>
> *Carlill*'s case shows that the principle is an offer, to be capable of acceptance, must involve promise by the offeror that he will bind himself if the exact terms specified by him are accepted.

[6] It must be noted that by reading the relevant correspondences — the plaintiff was the cause of confusion for the purchase of the said unit on 26 June 2010 for reasons best known to himself and it was quiet obvious that the plaintiff had not handed over the bank draft for the specified sum in one lump sum of RM100,000 as per the booking procedures but only proceeded to hand over two drafts worth RM100,000 by a letter dated 28 June 2010 to the first defendant. In essence the plaintiff did not comply strictly with the booking procedures and was cause of the confusion and this is reflected in the plaintiffs letter dated 28 June 2010 which ends with an apology. It must be asserted here that common sense will dictate when a person has been wronged he will not apologise. The said letter reads as follows:

> Hui Jia Hao
>
> (Address)
>
> The Sales Manager Perdana
>
> Parkcity Sdn Bhd (Address)
>
> Dear Sir/Madam,
>
> *RE: Purchase of Unit CSM141 — Casaman*
>
> The above refers.
>
> I am the legal holder of queue no of 8 and would like to inform that the register purchasers to be reflected in the Sales & Purchase Agreement to be limited to the following persons:
>
> (1) Hui Jia Hao — the queue holder number

(2) Hui Siew Choong — Father of Hui Jia Hao, a repeat buyer for 27-5 Northshore, Zenia 125 and Zenia 108

(3) Yong Pitt Lok — Partner of Hui Siew Choong

I attached herewith 2 bank drafts totaling KM100,000.00 (SCB595984 and SCB 323571) for the payment of the deposit for the above purchase.

Kindly ignore the personal cheque issued yesterday.

I regret for all inconveniences caused.

Thank you.

Yours Faithfully,

[7] The first defendant's letter dated 27 August 2010 sets out the case of the first defendant in a concise manner and that letter reads as follows:

Mr. Hui Jia Hao

(Address)

Dear Sir,

Re: Execution of Sale and Purchase Agreement

Project: DESA PARKCITY, KUALA LUMPUR

Phase: SECTOR E-CASAMAN

Unit: CSM/141

We refer to the above and your letter dated 4 August 2010.

We wish to state the facts for the record:

(a) On 26 June 2010, a ballot was held at the sales launch of Casaman, Desa Park City and you were successful and given the right to purchase the properties on offer in the said Project;

(b) You did purchase two other properties in the said Project, being Unit Nos. CSM13 and CSM140 where you completed the Customer(s) Form together with other joint buyers, signed the Offer to Purchase and paid to us the earnest monies of RM50,000.00 and RM100,000.00 for the said units respectively;

(c) We refute the allegation that you have presented the bank drafts to our sales personnel for the purchase of Unit CSM/141 ('the said Property') on 26 June, 2010. You only attempted to do so on 28 June, 2010 vide your letter of the same date;

(d) In fact on 26 June, 2010, you brought in and consented to a Ms Lee Yee Pei purchasing the said Property based on your balloted number, In your presence, Ms Lee completed the Customer(s) Form, signed the Offer to Purchase and paid the earnest monies of RM100,000.00 for the said Property.

We advise that while you were successful in the balloting procedure, it does not automatically give you a right to any of the properties (including the said

Property) on offer. It merely gives you a right to purchase the properties SUBJECT TO the completion of the Customer(s) Form, the execution of the Offer to Purchase and the payment of the earnest monies of RM100,000.00. This you have failed to do in respect of the said Property.

Furthermore, you have consented to Ms Lee Yee Pei's purchase of the said Property on 26 June 2010 and you cannot now claim the said Property as yours purely on the strength of being the holder of ballot number 8. Indeed on the basis, you are stopped from claiming the said Property.

For your information, we have been served a notice of demand from Ms Lee's solicitors claiming for the ownership of the said property.

As such, kindly sort out your private arrangements with Ms Lee Yee Pei in respect of the said Property.

TAKE NOTICE that in the event you are unable to resolve the above matter amicably with Ms Lee, we will have no choice but to include you as third party in any legal action that Ms Lee may institute against us in respect of the said Property and let the Courts decide on the rightful owner of the said Property.

TAKE FURTHER NOTICE that in such an event, all legal cost and expenses incurred by us in connection with such legal action shall be borne and paid by you.

In the meantime, we reserve our rights accordingly.

Yours faithfully,

PERDANA PARKCITY SDN BHD

[8] The parties have relied on the following cases: *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256; *Eckhardt Marine Gmbh v Sheriff Mahkamah Tinggi Malaya, Seremban & Ors* [2001] 4 MLJ 49; [2001] 3 CLJ 864; *Gibson v Manchester City Council* [1979] 1 All ER 972; *Preston Corporation Sdn Bhd v Edward Leong & Ors* [1982] 2 MLJ 22; *Kam Mah Theater Sdn Bhd v Tan Lay Soon* [1994] 1 MLJ 108; *Nai Yau Juu v Pasdec Corporation Sdn Bhd & Anor* [2005] 3 MLJ 431; [2005] 5 CLJ 304; *Daiman Development Sdn Bhd v Mathew Lui Chin Teck and another appeal* [1978] 2 MLJ 239; *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* [1994] 2 MLJ 754; *Sou Yong v Yuzin bte Abdullah @ Ho Yuzin* [2006] 4 MLJ 409; [2006] 2 CLJ 1179; *Tang Meng Hock v Tang Ming Seng* [2010] 1 MLJ 33; [2010] 1 CLJ 208; *Tasja Sdn Bhd v Golden Approach Sdn Bhd* [2011] 2 CLJ 789; *Zainal Abidin Mohamed v Roslan Abdul Aziz & Anor* [2003] 7 CLJ 132.

[9] I have read the relevant documents and submissions of the parties in detail. I am grateful to learned counsel for the respective parties to have agreed to end the dispute by way of O 14A application, which has saved much of the court's time and substantial costs. All the parties have placed a comprehensive submission for which the court is grateful.

[10] In the instant case the first question that the parties have posed is whether the entry and booking procedures is a legally binding contract. I must say that the essential elements of a valid contract will include, offer and acceptance; intention to create legal relations; lawful objects; free consent; lawful consideration; competency of parties to contract and certainty of terms.

[11] In the Malaysian context s 2 of the Contracts Act 1950 ('CA 1950') does not define an offer. However it sets out what amounts to a proposal. Some authors take the view that the word offer and proposal are synonymous and are used interchangeably in the CA 1950. However what amounts to a proposal may be wider in meaning than an offer. For example, an offer will include an expression of readiness to do or give something. However the definition of proposal under the CA 1950 is stated as follows:

> When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal.

The definition of proposal unlike the definition of offer will appear to cover many other concepts including the doctrine of estoppel. The CA 1950 states that the person who makes the proposal is called the promisor, and the person who accepts the proposal is called the promisee as opposed to 'offeror' an 'offeree' under the common law. General principles of law of contract is that a valid proposal may be expressed or implied and must give rise to legal relations or consequence. Further the terms of the proposal must be certain and not vague. The proposal can be specific or general but must be communicated to the promisee. The proposal can be conditional or unconditional. A proposal is revoked if it is not accepted within the stipulated or reasonable time; or accepted in the mode prescribed or if no mode is prescribed in some usual and reasonable manner; or by notice of revocation of the proposer; or death or insanity of the proposer or the acceptor before acceptance.

[12] The proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto. A proposal when accepted becomes a promise. General principles of law of contract is that for acceptance to be valid it must be given by the person to whom the offer is made; the acceptance must be absolute and unqualified; must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted; and the acceptance must be communicated to the proposer by the acceptor. The communication of a proposal is complete when the proposal comes to the knowledge of the acceptor. The general principles stated above may vary on different facts, and at times it may be contentious issues which have to be decided by the court, as this case will show, and cases in this area of law will often expose hair splitting arguments by the parties for the shortcoming of the legal formalities.

[13] Learned counsel for the plaintiff says that the issue to be considered here is whether the invitation letter and the booking procedure amounts to an offer (ie proposal) or invitation to treat or mere puff, and asserts that it cannot be invitation to treat due to the fact that although the offer was made to the world at large, the offer was accepted only by those performing the conditions stated in the entry and booking procedures. In addition says (i) the 'Priority Sales Event strictly opened to invited guests' and in consequence it is a definite offer made by the first defendant; (ii) the first defendant's act of conducting an admission by balloting system clearly shows that the offer was confined only to those ballot holders (priority ballot holders) who will enjoy further attractions such as the introductory prices, early bird incentives and repeat customer discount; and (iii) this clearly shows that this is not an invitation to treat but a unilateral contract with the intention to be bound and no further bargaining is expected to result from those terms and conditions.

[14] Learned counsel for the first defendant says (i) the entry and booking procedures attached together with the invitation letter were merely a procedure set up by the first defendant to regulate the entry of the guests into its premises. They are not legally binding on the first defendant; (ii) the entry and booking procedures attached together with the invitation letter could only, at most, be treated as an invitation to treat, and could not be viewed as an offer by the first defendant to sell to the plaintiff the Casaman Unit, CSM 141; (iii) even if the entry and booking procedures attached together with the invitation letter was an offer by the first defendant, the plaintiff had not accepted any purported offer from the first defendant on the day of the priority sales event in regards to the unit of CSM 141; and (iv) even if there is evidence that the plaintiff has made a valid offer to purchase CSM 141, there is no evidence that the first defendant had ever accepted the plaintiff's offer.

[15] There is much legal literature on what amounts to invitation to treat and/or offer. It all depends on the facts and intention. The court has taken a strict approach, stating that there must be clear offer and acceptance in order to create a binding contract. As such, offer must be clear in terms and capable of acceptance and only be accepted on terms that mirror the offer, as established in the case of *Kam Mah Theater Sdn Bhd*. In my view a statement in the nature of offer or proposal which cannot be a subject matter of immediate acceptance of a specific subject matter (in the instant case the said property) will at the most stand as invitation to treat only. In my view the test ought to be 'whether the offer is immediately capable of acceptance'. Anything less may amount to invitation to treat or mere puff or general notice of intention etc; Applying the said test I do not think the said 'letter and Entry and Booking Procedures' will amount to an offer capable of immediate acceptance for the purchase of the said property.

[16] There are further difficulties in this case to even classify the invitation letter with the entry and booking procedure as invitation to treat. My reasons, inter alia, are as follows (i) the letter of invitation says it is an invitation to attend the event only; (ii) only at the 'Priority Sales Event' the promotions will be offered; and (iii) the statements in the annexure of entry and booking procedures give notice of what will take place on the day of event.

In consequence the statements contained in both the documents in my view will not qualify to even say that there was in the instant case a unilateral contract as advocated in cases like *Carlill*. In *Carlill* case the statements on the facts were not treated as ambiguous and the performance by any person of the terms entitled the person to the reward. In the instant case the several statements in the letter of invitation as well as entry and booking procedures will stand as a notice of the event and what is going to happen in the event only. The several statements in both may not even qualify as invitation to treat let alone as offer, as, inter alia, they do not manifest an apparent present contractual intent (see *Harvey v Facey* [1893] AC 552; *Clifton v Palumbo* [1944] 2 All ER 497).

[17] The learned authors *Subrahmanyan & Singal on Indian Contract Act*, (3rd Ed) at p 119 observes as follows:

> To create a power of acceptance, and, therefore, a proposal, the act of the person, who is alleged to have made it, must —
>
> (a) have been an expression of his will or intention, and
>
> (b) have led the person to whom the proposal was made reasonably to believe that a power to create an agreement by acceptance is conferred upon him.
>
> But, where it is reasonably apparent that some further act of the proposer is necessary, there is no proposal, and the person, to whom the proposal is made, has no power to create a contractual relation by an act of his own.
>
> I take the view that the entry and booking procedures is not a legally binding contract between the plaintiff and the first defendant.

[18] On the second issue whether the plaintiff has made an offer to purchase CSM 141 and if so whether it had been accepted by the first defendant — I am in agreement with the submission of the learned counsel of the first defendant that there is no evidence of such intent on the particular day to create an enforceable agreement. Support for the proposition can be found in a number of cases. To name a few are as follows:

(a) in *Gibson v Manchester City Council* the Manchester City Council wrote to Mr Gibson stating that the Council 'may be prepared to sell' the Council house to him at £2,180 and invited him 'to make formal application to buy'. Before the process of preparation and exchange of contracts, the control of the Council changed hands from the

Conservation Party to the Labour Party and the new Council refused to complete the sale. The House of Lords held that the Council's letter was at most an invitation to treat. The words 'may be prepared to sell' and 'to make formal application to buy' appearing in the Council's letter was fatal to the contention that the letter was contractual offer, capable of being converted into a legally enforceable contract for the sale of land by Mr Gibson's written acceptance of it;

(b) in the Federal Court decision of *Preston Corporation Sdn Bhd v Edward Leong & Ors*, Salleh Abas FJ observes:

> an offer is an intimation of willingness by an offeror to enter into a legally binding contract. Its terms either expressly or impliedly must indicate that it is to become binding on the offeror as soon as it has been accepted by the offeree.

(c) further, in *Skyline Trading Co v Tiow Yoke Lan* [1969] 2 MLJ 212 the Federal Court held that:

> the booking fee in this case was paid on the condition that the amount was to form part of the purchase price in the event that a contract of purchase came to be executed, and as in this case no such contract was entered into the respondent was entitled to refund of the booking fee.

[19] In addition I must say that the test for determining the position of invitation to treat and an offer was also observed in the case of *Eckhardt* where Gopal Sri Ram JCA held:

> First, the general approach that is to be adopted by a court in determining whether there is an agreement concluded between the parties is to see whether there is a definite offer made by one party which has been accepted by the other … such an approach should be generally adopted was affirmed by the House of Lords in *Gibson v Manchester City Council* [1979] 1 All ER 972.

Applying the said test the answer to the second issue must be in the negative.

[20] On the third issue whether the second defendant is a bona fide purchaser for value, I agree with the submission of the learned counsel for the second defendant that the second defendant is indeed a bona fide purchaser for value in the instant case.

[21] On the facts of the case and taking into consideration the confusion created by the parties in relation to the purchase of the property I take the view that no order for costs ought to be made. In consequence, the plaintiff's action is dismissed with no order as to costs.

I hereby order so.

Plaintiff's action dismissed with no order as to costs.

Reported by Kohila Nesan